



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

COLUMBIA MEDICAL CTR OF ARLINGTON  
C/O PORTER & KOCH LLP  
770 SOUTH POST OAK LANE SUITE 500  
HOUSTON TX 77056

#### **Respondent Name**

IRVING ISD

#### **Carrier's Austin Representative Box**

Box Number 42

#### **MFDR Tracking Number**

M4-98-D687-01

#### **MFDR Date Received**

NOVEMBER 25, 1997

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** "It is the position that the services and treatment to claimant were not only medically necessary but it was also additionally concurred by the commission that the surgery and services were necessary and reasonable as evidenced by the enclosed second opinion report. The carrier's denial is grounded in bad faith and it is further the position of the provider the carrier is liable for at least 80% of the total charges by virtue of the fact the charges exceed the stop-loss."

**Amount in Dispute:** \$86,330.85

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "It is the carrier's position that the admission of this patient was not preauthorized and that there was no emergency relieving the provider from seeking preauthorization as set forth by Rule 134.600."

**Response Submitted by:** Ward North America Inc., 2777 Stemmons Frwy., Suite 1530, Dallas, TX 75207

### **SUMMARY OF FINDINGS**

Date(s) of Service	Disputed Services	Amount In Dispute	Amount Due
May 17, 1997 through July 1, 1997	Inpatient Hospital Services	\$86,330.85	\$0.00

### **FINDINGS AND DECISION**

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

#### **Background**

1. Former 28 Texas Administrative Code §133.305, effective June 3, 1991, 16 *Texas Register* 2830, sets out the procedures for resolving medical fee disputes.
2. Former 28 Texas Administrative Code §134.1(f) effective October 7, 1991, 16 *Texas Register* 5210, sets out the reimbursement guidelines for the services in dispute.

3. 28 Texas Administrative Code §134.600, effective April 1, 1997 requires preauthorization for inpatient hospitalizations.
4. 28 Texas Administrative Code §133.206, effective December 27, 1996 sets out the spinal surgery second opinion process.
5. This request for medical fee dispute resolution was received by the Division on November 25, 1997.
6. The services in dispute were reduced/denied by the respondent with the following reason codes for dates of service May 17, 1997 through May 30, 1997:
  - A-Preauthorization not obtained.
  - M-Reduced to fair & reasonable.Neither party to this dispute submitted explanation of benefits for dates of service May 31, 1997 through July 1, 1997.

## **Findings**

1. The respondent denied reimbursement for the disputed services based upon "A-Preauthorization not obtained." A review of the Discharge Summary report indicates that "She again presented to the Emergency Room on May 17, 1997 with intractable pain radiating into the left lower extremity and she was subsequently admitted into the hospital for pain control." "While she was in the hospital, spinal surgery recommendations were submitted to her workers' compensation insurance company." "The workers' compensation insurance carrier indicated they wanted the patient to undergo a second opinion. However, the patient was unable to be discharged from the hospital in order to go for a second opinion due to the need to control her pain with the I.V. parenteral analgesics. Several pleas were made to the insurance company to have a neurosurgeon or an orthopedic surgeon who had staff privileges at the hospital to evaluate the patient for a second opinion, but this request was not granted. Therefore, she remained in the hospital for pain control until she sent for her second opinion at Southwestern Medical School on June 17, 1997. She was evaluated by Dr. Kopitnik who concurred with the spinal surgery recommendations." "She was subsequently scheduled for surgery and underwent the above mentioned procedures on June 20, 1997."

28 Texas Administrative Code §134.600(h)(1), effective April 1, 1997 requires preauthorization for "all non-emergency hospitalizations, ambulatory surgical center care, and transfers between facilities."

28 Texas Administrative Code §133.206(a)(2) defines a medical emergency as "A-diagnostically documented condition including but not limited to:

- (A) unstable vertebral fracture of such critical nature that increased impairment may result without immediate surgical intervention;
- (B) bowel or bladder dysfunction related to spinal injury;
- (C) severe or rapidly progressive neurological deficit; or
- (D) motor or sensory findings of spinal cord compression."

Based upon the submitted medical records, the claimant was admitted to the hospital on May 17, 1997 and underwent spinal surgery on June 20, 1997, thirty four days later. The admission does not meet the definition of medical emergency; therefore, preauthorization was required for the admission prior to the spinal surgery. Reimbursement is not recommended for dates of service May 17, 1997 through June 19, 1997 per 28 Texas Administrative Code §134.600(h)(1).

2. 28 Texas Administrative Code §134.600(b), effective April 1, 1997, states "Second opinions for spinal surgery are addressed in Chapter 133, Subchapter C. of this titled (relating to Second Opinions for Spinal Surgery).

28 Texas Administrative Code §133.206(a)(13), effective December 27, 1996 states "Concurrence – A second opinion doctor's agreement with the surgeon's recommendation that spinal surgery is needed. Need is assessed by determining if there are any pathologies in the spine that require surgical intervention. Any indication by the qualified doctor that surgery to the proposed spinal area (e.g. cervical, thoracic, lumbar, or adjacent levels of different areas to the spine) is needed is considered a concurrence, regardless of the type of procedure or level."

The requestor submitted a copy of a spinal surgery second opinion report from Dr. Tom Kopitnik that concurred with claimant's need for spinal surgery.

28 Texas Administrative Code §133.206(b)(2), effective December 27, 1996 states "The reasonable and necessary costs of spinal surgery include the services of the surgeons and ancillary providers during the hospital admission, and the hospital services." Dr. Tom Kopitnik concurred with the claimant's need for spinal surgery; therefore, the respondent's liable for the reasonable and necessary costs of spinal surgery and hospital services for dates of service June 20, 1997 through July 1, 1997.

3. 28 Texas Administrative Code §133.206(b)(3), effective December 27, 1996 states "If a carrier becomes liable for spinal surgery pursuant to the provisions of this section, any medical dispute resolution shall be limited to a dispute as to the reasonableness of the fees charged for the spinal surgery." This decision will be limited to the reasonableness of the fees charged for the spinal surgery and hospitalization from June 20, 1997 through July 1, 1997.
4. The former agency's *Acute Care Inpatient Hospital Fee Guideline* at 28 Texas Administrative Code §134.400, 17 *TexReg* 4949, was declared invalid in the case of *Texas Hospital Association v. Texas Workers' Compensation Commission*, 911 *South Western Reporter Second* 884 (Texas Appeals – Austin, 1995, writ of error denied January 10, 1997). As no specific fee guideline existed for acute care inpatient hospital services during the time period that the disputed services were rendered, the 1991 version of 28 Texas Administrative Code §134.1(f) applies as the proper Division rule to address fee payment issues in this dispute, as confirmed by the Court's opinion in *All Saints Health System v. Texas Workers' Compensation Commission*, 125 *South Western Reporter Third* 96 (Texas Appeals – Austin, 2003, petition for review denied). 28 Texas Administrative Code §134.1(f), effective October 7, 1991, 16 *Texas Register* 5210, requires that "Reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers' Compensation Act, sec. 8.21(b), until such period that specific fee guidelines are established by the commission."
5. The former Texas Workers' Compensation Act section 8.21 was repealed, effective September 1, 1993 by Acts 1993, 73rd Legislature, chapter 269, section 5(2). Therefore, for services rendered on or after September 1, 1993, the applicable statute is the former version of Texas Labor Code section 413.011(b), Acts 1993, 73rd Legislature, chapter 269, section 1, effective September 1, 1993, which states, in pertinent part, that "Guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commission shall consider the increased security of payment afforded by this subtitle."
6. 28 Texas Administrative Code §133.305(d)(7), effective June 3, 1991, 16 *Texas Register* 2830, requires that the request shall include "copies of all written communications and memoranda relating to the dispute." Review of the documentation submitted by the requestor finds that the request does not include a copy of explanation of benefits for dates of service May 31, 1997 through July 1, 1997 or other written communications and memoranda pertinent to the dispute. The Division concludes that the requestor has not met the requirements of §133.305(d)(7).
7. Review of the submitted documentation finds that:
  - The requestor's position statement asserts that "the carrier is liable for at least 80% of the total charges by virtue of the fact the charges exceed the stop-loss."
  - The requestor did not discuss or explain how it determined that 80% of the amount billed would yield a fair and reasonable reimbursement.
  - The Division finds that a reimbursement methodology based upon payment of a hospital's billed charges, or a percentage of billed charges, does not produce an acceptable payment amount. Such a reimbursement methodology would leave the ultimate reimbursement in the control of the hospital, thus defeating the statutory objective of effective cost control and the statutory standard not to pay more than for similar treatment of an injured individual of an equivalent standard of living. It also provides no incentive to contain medical costs. Therefore, a reimbursement amount that is calculated based upon a percentage of a hospital's billed charges cannot be favorably considered when no other data or documentation was submitted to support that the payment amount being sought is a fair and reasonable reimbursement for the services in dispute.
  - The requestor does not discuss or explain how payment of the amount sought would result in a fair and reasonable reimbursement for the services in this dispute.
  - The requestor did not submit documentation to support that the payment amount being sought is a fair and reasonable rate of reimbursement for the disputed services.
  - The requestor does not discuss or explain how payment of the requested amount would satisfy the requirements of 28 Texas Administrative Code §134.1.

The request for additional reimbursement is not supported. Thorough review of the documentation submitted by the requestor finds that the requestor has not demonstrated or justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for the services in dispute. Additional payment cannot be recommended.

## **Conclusion**

The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support the reimbursement amount sought by the requestor. The Division concludes that this dispute was not filed in the form and manner prescribed under 28 Texas Administrative Code §133.305(d). The Division further concludes that the requestor failed to support its position that additional reimbursement is due. As a result, the amount ordered is \$0.00.

## ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

## **Authorized Signature**

_____ Signature	_____ Medical Fee Dispute Resolution Officer	07/06/12 _____ Date
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_____ Signature	_____ Medical Fee Dispute Resolution Manager	07/06/12 _____ Date
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## ***YOUR RIGHT TO REQUEST AN APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**